88-1788

Supreme Court, U.S.
FILED
JUN 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

DAVID JOHN DANNER, PETITIONER
V.
DOROTHY KLOSTERBUER,
Assistant Johnson County Attorney,
and
DIRECTOR,
Child Support Recovery Unit,
STATE of IOWA ex rel.

BRIEF SUPPORTING RESISTANCE TO PETITION FOR WRIT OF CERTIORARI FROM THE IOWA SUPREME COURT

ANNE M. LAHEY
Assistant Johnson County Attorney
Johnson County Courthouse
P.O. Box 2450
Iowa City, IA 52244
(319)339-6100

ATTORNEY FOR RESPONDENTS

38 pp

QUESTION PRESENTED

Whether or not an order pursuant to a dissolution decree requiring Petitioner to pay child support and corresponding statutory provisions for enforcement of that support obligation deny Petitioner due process of law as guaranteed by the Fourteenth Amendment of the United States Consititution.

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BRIEF SUPPORTING RESISTANCE TO PETITION
FOR WRIT OF CERTIORARI
FROM THE IOWA SUPREME COURT

Respondents, Dorothy Klosterbuer and the Director of the Child Support Recovery Unit for the State of Iowa, respectfully ask that the Petition for a writ of certiorari be denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the provisions cited by Petitioners, the Respondent would add:

6. Section 598.21 subsection 4, Code of Iowa, 1975, provides:

> Upon every judgment of annulment, dissolution or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for support of a child. . .

7. Section 252D.1 subsection 3, 1987 provides for enforcement of delinquent child support judgments through involuntary assignment of income.

STATEMENT OF THE CASE

Kathleen Ann Danner and Petitioner, David John Danner, had their marriage dissolved in the Iowa District Court in and for Johnson County on February 11, 1975 Kathleen Danner was awarded custody of the parties' minor child and David Danner was ordered to pay $30.00 per week child support for the child. (App. J, p. 33a).

In 1984 the Child Support Recovery Unit for the State of Iowa received a request pursuant to the Uniform Support of Depen-

dants Law, Chapter 252A, Code of Iowa, from the State of Nebraska to enforce the delinquent support obligation of David Danner.

Pursuant to the request for enforcement, the Child Support Recovery Unit garnished Petitioner's wages. Petitioner filed a Motion to Quash the Garnishment. (App. I, p. 31a). The Iowa District Court in and for Johnson County upheld the garnishment. Petitioner had claimed he had no child support delinquency because he pays the ordered support to an escrow account for the benefit of his daughter. Petitioner is the only one who has access to the account and no money from that account has been actually paid to the child or Kathleen Danner. (App. H, p. 29a).

In 1985, Petitioner filed a Motion for Declaratory Judgment asking the court to declare there was no child support obligation as it was satisfied by his payment to the escrow account. The Johnson County

District Court denied the Motion finding that the issue had been addressed in the prior order and was, thus, res judicata. (App. D, p. 16a). The Iowa Court of Appeals upheld the findings of the district court. (App. C, p. 14a).

Petitioner still had not voluntarily paid his child support as ordered. The Child Support Recovery Unit obtained an involuntary wage assignment pursuant to Section 252D.1 of the Code of Iowa. Petitioner filed a writ of certiorari in district court challenging the action of the Child Support Recovery Unit. Again, Petitioner's main contention was that there was no delinquency because of his payment to the escrow account and Ms. Danner had waived her right to support by signing a waiver to a bank account in 1981. The district court denied Petitioner the relief sought. The Iowa Court of Appeals reversed the district court, finding that Petitioner was not given

timely notice of the involuntary wage assignment. (App. B, p. 10a). Petitioner asked for further review to the Iowa Supreme Court because the Court of Appeals did not rule on the issue of the underlying support delinquency. The Iowa Supreme Court denied Petitioner's request for further review on February 3, 1989 (App. A, p. 9a).

ARGUMENT

Granting of a writ of certiorari is in a matter of discretion of the court and not a matter of right. Rule 17(1) of the Rules of United States Supreme Court states that a review on writ of certiorari "will be granted only when there are special and important reasons therefor." The "special and important reasons" within Rule 17 relating to granting of certiorari relate to problems beyond the academic or episodic, especially where issues involved reach con-

stitutional dimensions. Rice v. Sioux City Memorial Park Cemetary, 349 U.S. 70, 74, 75 S.Ct. 614, 616, 99 L.Ed. 897, 901 (Iowa 1955).

Petitioner asserts a constitutional violation of his right to due process. Petitioner is not specific as to how his right to due process was violated and fails to present any question of federal law to be reviewed by this Court.

Despite his assertion of a constitutional violation, Petitioner does not appear to be attacking the facial validity of the state statutes underlying his child support obligation and enforcement of that obligation. There appears absent, also, any contention by Petitioner that the statutes as applied to him are unconstitutional.

The only real contention of Petitioner is that enforcement of his support obligation should not be allowed. Petitioner contends that any support obligation he had

is satisfied by his paying his support to a bank account to which he has sole access and/or the mother of the child has waived her right to receive support. Satisfaction of a child support obligation or a waiver of such obligation are factual questions and not the proper subject matter for a certiorari review by this Court.

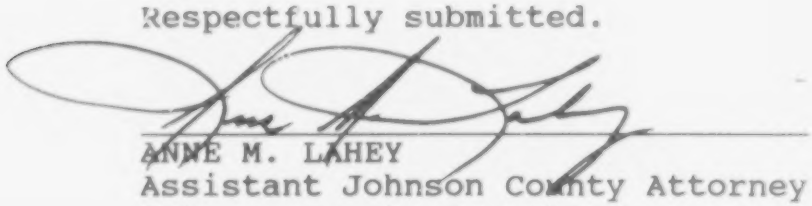
Furthermore, these factual issues Petitioner seeks to herein raise were not properly before the state court in the last court proceeding which generated this Petition. The Iowa Court of Appeals had decided these same issues were res judicata on June 25, 1986. (App. C, p. 14a). Petitioner now seeks to have this Court review issues that were finally adjudicated in 1984.

CONCLUSION

Petitioner raises no issue or issue which constitute any federal question, let alone an important federal question. Petitioner asserts a vague denial of due process

claim under the Fourteenth Amendment, but such vague claims are not properly subject to certiorari review by this Court. Petitioner is not attacking the constitutional validity of any state statute and is only raising factual issues which are res judicata in the state court proceeding.

Respectfully submitted.



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ATTORNEY FOR RESPONDENTS

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF IOWA

No. 88-207

ORDER

Filed February 3, 1989

David John Danner, Appellant,

vs.

Dorothy Klosterbuer,

Asst. Johnson County Attorney,

and

Director,

Child Support Recovery Unit,

State of Iowa ex rel., Appellees.

The application for further review filed by plaintiff-appellant is hereby overruled and denied after consideration by this court en banc. Dated this 3rd day of February, 1989.

THE SUPREME COURT OF IOWA

/s/ Arthur A. McGiverin

Arthur A. McGiverin, Chief Justice

APPENDIX B

IN THE COURT OF APPEALS OF IOWA

NO. 8-507/88-207

OPINION

Filed November 29, 1988

David John Danner, Appellant,

vs.

Dorothy Klosterbuer,

Asst. Johnson County Attorney,

and

Director,

Child Support Recovery Unit,

State of Iowa ex rel., Appellees.

Appeal from the Iowa District Court for Johnson County (No. 50241), Paul J. Kilburg, Judge.

The plaintiff filed a district court certiorari proceeding challenging an order of the Child Support Recovery Unit ordering an assignment of his wages for child support. REVERSED, WRIT SUSTAINED.

David John Danner, Iowa City, plaintiff-appellant, pro se.

Anne Lahey, Asst. Johnson County Attorney, for the defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

SACKETT, J.

We address plaintiff-appellant David John Danner's claim the child support recovery unit acted improperly when it ordered an assignment of his income pursuant to Iowa Code chapter 252D (1987) to pay a child support obligation. The matter came before the trial court on plaintiff's petition for certiorari. The trial court after a hearing annulled the writ. We determine the department failed to follow the proper notice procedures when they ordered an assignment of income. We reverse the trial court.

In 1984 the Iowa legislature passed an act on delinquent support payment and the assignment of income (see 84 Acts, Ch.

1239 section 7). The act is designated chapter 252D. The act, among other things, provides after meeting certain procedural requirements the child support recovery unit or the district court shall enter orders assigning income for child support obligations.

Danner's marriage had been dissolved in Johnson County in 1974. The dissolution decree ordered Danner to pay child support. In August 1986 the department determined Danner was delinquent in his child support payments and sought to utilize the provisions of chapter 252D to put into place a wage assignment.

Because Danner's support obligation was established before July 1, 1984, it was required he be notified of the mandatory assignment of income under section 252D.1. Notification was required in accordance with section 252D.3, which provides in relevant part:

> . . . [f]or orders for support entered before July 1, 1984, the clerk of the district court, the child support recovery unit, or the person entitled by the order to receive the support payments, shall notify each person ordered to pay support under such orders of the mandatory assignment of income required under section 252D.1. The notice shall be sent by certified mail to the person's last known address or the person shall be personally served with the notice in the manner provided for service of an original notice at least fifteen days prior to the filing of a petition under section 252D.1, subsection 4 or the ordering of an assignment of income under section 252D.1, subsection 3 or 4. A person ordered to pay support may waive the right to receive the notice at any time. (emphasis added).

An affidavit is filed stating notice of a potential assignment was mailed to Danner's last known address by certified mail

on July 31, 1986. The notice was unclaimed. It was returned to the department on August 14, 1986. Also on July 31, 1986, Susan Halverson, Support Recovery Unit Officer, signed an order notifying Danner a wage assignment was to be ordered. There is no proof on file showing Halverson's order was mailed to Danner.

On August 14, 1986, an order for mandatory withholding was entered by the department. This notice was sent to Danner's employer.

The July 31, 1986 order notifying Danner and the August 14, 1986 order assigning his wages sought to allow the department to order an assignment of income in accordance with section 252D.1 (3) which provides in relevant part:

> If support payments ordered under section . . . 598.21, . . . are not paid to the clerk of the district court pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, upon application of a person entitled to receive the support payments, the child support recovery unit or the district court may enter an ex parte order notifying the person whose income is to be assigned, of the delinquent amount, of the amount of income or wages to be withheld, and of the procedure to file a motion to quash the order of assignment, and shall order an assignment of income and notify an employer, trustee, or other payor by certified mail of the order of the assignment of income requiring the withholding of specified sums to be deducted . . .

Danner contends the order assigning his income was entered by the department without meeting the notice requirements of the statute. We agree and therefore find it unnecessary to address his second issue that the department computed his unpaid child support an an incorrect figure.

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Because the order for Danner to pay child support was entered prior to July 1, 1984, it was necessary before entering a support assignment to follow the notice dictates of two sections; namely sections 252D.3 and 252D.1(3). A notice under 252D.3 was required to be sent fifteen days prior to an assignment of income under section 252D.1(3). The department proceeded prematurely. The 252D.3 notice was mailed July 31, 1986. The assignment order was entered August 14, 1986. Iowa Code section4.1(2) provides with reference to construction of statutes in applicable part, "In computing time, the first day shall be excluded and the last day included . . . ." In counting days according to the dictates of Iowa Code section 4.1(2), we determine only fourteen days passed from the mailing of the notice to the entry of the order assigning income.

We note too there is no proof Danner was notified of the order entered by the department on July 31, 1986, notifying Danner his income was to be assigned, the amount of the assignment and the procedure to quash. See Iowa Code section 252D.1(3).

Having failed to comply with the statutory procedures, the department exceeded its jurisdiction in entering the order. The trial court should have sustained the writ. We reverse and quash the mandatory order.

REVERSED, WRIT SUSTAINED.

APPENDIX C

IN THE COURT OF APPEALS OF IOWA

NO. 6-125/85-1188

OPINION

Filed June 25, 1986

In re the Marriage of Kathleen Ann Danner and David John Danner

Kathleen Ann Danner, Appellee,

and

David John Danner, Appellant.

Appeal from the Iowa District Court for Johnson county (No. 1748)-Thomas L. Koehler, Judge.

Respondent appeals an adverse ruling in a declaratory judgment action and a denial of his application for a temporary injunction. AFFIRMED.

David John Danner, respondent-appellant, pro se.

Thomas J. Miller, Attorney General; J. Livingston Dunkle, Asst. Attorney General; and Anne Lahey, Asst. Johnson County Attorney, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. PER CURIAM

Respondent appeals an adverse ruling in a declaratory judgment action and a denial of his application for a temporary injunction. We affirm.

Respondent David Danner and petitioner Kathy Danner dissolved their marriage in 1975. Kathy was awarded custody of their minor child, and David was ordered to pay $30.00 per week in child support. In 1984, petitioner garnished respondent's wages to collect the current and overdue child support. David moved to quash the garnishment alleging he had been denied visitation, the garnishment was barred by laches, the amount of child support was in error, and his low income justified reducing the amount.

The trial court held, in August, 1984, that portions of the child support were not enforceable due to laches and that respondent had paid portions of the amount owed during the time he was

alleged to have not paid anything. Consequently the trial court reduced the amount owed by respondent since May 6, 1979, to $7,470.00. All other issues raised at the hearing were overruled and denied, including respondent's assertion that his child support obligations were being properly handled by establishing an escrow account for the child's benefit.

In May, 1985, respondent filed, pro se, a declaratory judgment action challenging the trial court's ruling and a temporary injunction to prevent enforcement of the ruling. Respondent failed, however, to raise any new issues or claims in the declaratory judgment and in the application for a temporary injunction. He once again attacked the trial court's holdings concerning visitation and child support. He also requested monetary damages due to limitations placed on visitation by petitioner. The trial court overruled and denied respondent's motions because the issues had already been litigated and determined by the trail court in August, 1984.

We agree with the trial court and conclude that respondent's motions are barred by the doctrine of res judicata. "A valid and personal judgment rendered in favor of the defendant bars another action by the plaintiff on the same claim." Noel v. Noel, 334 N.W.2d 146, 148 (Iowa 1983). The trial court was confronted in August 1984, with a series of events of substantially the same sort, all arising out respondent's obligation to petitioner and vice versa. All claims arising out of that series of events and obligations were in fact litigated and determined by the trial court at that time. Respondent raises no new issues or claims that could or should not have been litigated in the prior action. The trial court's denial of his motions is therefore affirmed.

AFFIRMED.

APPENDIX D

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

ORDER

Filed July 19, 1985

In re the Marriage of Kathleen Ann Danner and David John Danner

Kathleen Ann Danner, Petitioner,

and

David John Danner, Respondent.

Respondent's Motion for Declaratory Judgment, Application for Temporary Injunction, and Motion for Production of Documents were heard on the 19th day of July, 1985, at 9:00 a.m. The Petitioner appeared by Assistant Johnson County Attorney Anne Lahey. The Respondent appeared personally without counsel.

The Court, having reviewed the file and heard the arguments of counsel, finds that neither the Petitioner nor the Respondent submitted any evidence with regard to the Motions and Application. On the 31st day of August, 1984, this Court, by the Honorable L. Vern Robinson, entered an Order restricting the enforcement of the prior judgment without reducing the amount. The Respondent is attempting to relitigate many of the same issues without following the correct procedure. The Respondent is advised to seek legal counsel. The Motions and Application should be overruled and denied.

IT IS, THEREFORE, ORDERED that Respondent's Motion for Declaratory Judgment, Application for Temporary Injunction and Motion for Production of Documents are overruled and denied.

IT IS FURTHER ORDERED that the funds in the hands of the City of Iowa City in the amount of $1,672.38 should be condemned and applied to the judgment. The City of Iowa City is hereby ordered to pay to the petitioner the sum of $1,672.38 by forwarding same immediately to the Clerk of this Court.

Clerk to notify counsel and the Respondent.

Dated this 19th day of July, 1985.

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/s/ Thomas L. Koehler

JUDGE SIXTH JUDICIAL
DISTRICT OF IOWA

APPENDIX E

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 50241

PETITION FOR CERTIORARI

Filed September 26, 1986

David John Danner, Plaintiff,

vs.

Dorothy Klosterbuer,

Asst. Johnson County Attorney,

and

Director,

Child Support Recovery unit,

State of Iowa ex rel., Defendants.

COMES NOW Plaintiff and respectfully states to the Court, as follows:

1. Plaintiff is party to an action commenced by State of Iowa ex rel., thereby attaching his wages for support payment.

2. Defendants are representatives of the State of Iowa in said action brought against Plaintiff.

3. That Defendants acting in a judicial capacity have issued an Order withholding Plaintiff's wages, wherein they base said action on a Decree of Dissolution granted to a Kathleen Ann Danner.

4. That said Initial Decree of Dissolution is and was conclusive by operation of law, with regard all provisions set forth in said decree.

5. That public assistance is not now nor has it ever been at issue.

6. That previous, Plaintiff had moved this Court for relief from judgment given Kathleen Ann Danner on various equitable grounds and plaintiff has his objection to attachment with the defendants.

7. Plaintiff has not been served or properly notified by defendants of the present withholding of his wages as required

by law.

8. Plaintiff, under the terms of the Initial Decree, had made binding arrangements with Kathleen Ann Danner for payment of support. These payments are current to date and do include an arrearage.

9. That there is no evidence that Plaintiff's payment of support works a hardship on or acts against the best interests of his child.

10. That Kathleen Ann Danner, in an Order by this Court, is barred by reason of laches from collecting a portion of the judgment accorded her in the Initial Decree.

11. That the defendants have no jurisdiction under the provisions of the Initial Decree of Dissolution and that the Defendants have acted illegally when withholding the wages of Plaintiff.

WHEREFORE, Plaintiff prays that a Writ of Certiorari issue, and that the matter be set for hearing whereby the Defendant's action be annulled and the same decreed void, and that Plaintiff have judgment for costs and such amounts as the Defendants have illegally impounded.

/s/ David Danner

David Danner,
Box 1793, Iowa City, IA, 52244,
Plaintiff.

Exhibits annexed.
(Verification omitted here).
(The document here reproduced is attached and certified).

I, /s/ Kathleen Danner , do hereby waive all claims to the University of Iowa Credit Union member no. 0019850007 and surrender all rights of joint ownership on that account.

Signature /s/ Kathleen Danner
Witness /s/
Date October 23, 1981

APPENDIX F

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

NOTICE

Filed on Return May 20, 1985

Kathleen Ann Danner, Petitioner,

and

David John Danner, Respondent.

To the aforesaid Petitioner, Kathleen Danner:

You are hereby notified that Respondent's Motion for Declaratory Judgment, is now on file in the Office of Clerk of the District Court, Johnson County, Iowa, a true copy of which Motion hereto attached.

You are also notified to appear before said Court at Iowa City in Johnson County, Iowa, within 20 days after service of this Notice upon you, and unless you so appear between the hours 8:00 a.m. and 4:00 p.m., you serve, and within reasonable time thereafter file a written special appearance, motion, or reply, judgment or decree by default will be rendered against you for the relief demanded in the heretofore said Motion.

For further explanation of the consequences of this Notice, you are advised to consult an attorney.

Edward F. Steinbrech
Clerk of the above Court
/s/ Sandy Dains, Deputy
Johnson County Courthouse
Iowa City, Iowa 52240
(Seal of Court Clerk Affixed)

APPENDIX F

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

MOTION FOR DECLARATORY JUDGMENT

Filed on May 2, 1985

STATE OF IOWA ex rel.

Kathleen Ann Danner, Petitioner,

vs.

David John Danner, Respondent.

COMES NOW Respondent pursuant Iowa Rules of Civil Procedure, Rule 261, and states:

1. That the Answer and Counterclaim contained therein, dated September 11, 1984, as made by Respondent, is by this reference incorporated herein and made part hereof as though fully set forth.

2. That Respondent believes Declaratory Relief is appropriate based on the uncontroverted facts as stated in the Answer and Counterclaim contained therein and that this Motion goes to the whole of the defense and claim so made. Should,however, another remedy exist, Respondent respectfully requests leave of the Court to amend as directed, provided for by Iowa Rules of Civil Procedure, Rule 107.

3. That as the court must judicially notice under Iowa Rules of Civil Procedure, Rule 94, the issuance of the writ of execution to Petitioner is without a complete cause of action under the Decree of February 11, 1975. Petitioner, Kathleen Danner, has not entered of record and has refused to answer written statements to her signature, swearing to and showing facts material and proper to such issuance and the course of this action.

4. That as the Court must judicially notice under Iowa Rules of Civil Procedure, Rule 94, the action of Petitioner regarding the return of funds gained under said writ of execution is and has been void with regard to the time for such return of funds to be made to Clerk of the District Court, Johnson County, on all

APPENDIX F

such returns made.

5. That dispute exists regarding the rights and intentions of Petitioner to enforce the Judgment accorded her from the Decree of February 11, 1975, by writ of execution.

6. That this Motion is sufficient to disclose an existing justiceable controversy of sufficient immediacy and reality in which respondent has a real and present interest to warrant the issuance of a Declaratory Decree.

WHEREFORE, Respondent prays:

1. For a Declaratory Judgment whereby Petitioner be equitably estopped from further enforcing the Judgment of February 11, 1975 and any subsequent modification thereof by a Decree preventing her any levy or execution on the property or wages of Respondent, now and hereafter.

2. For a Declaratory Judgment assessing damages against Petitioner for knowingly and willfully secreting the minor child of Respondent from him in a reckless and grossly negligent manner, so as to inflict the damage complained of. The Judgment to encompass actual damages and exemplary damages, each specie of damages in the amount as set forth in the Counterclaim and prayed for there.

/s/ David Danner

David Danner
Box 1793, Iowa City, IA, 52244,
Respondent.

APPENDIX F

NO. 1748

AFFIDAVIT OF SERVICE

Filed on Return May 20, 1985

State of Nebraska

ss:

County of Douglas

The undersigned being first duly sworn, deposes and states:

1. That on the 7 day of May, 1985, I served the attached Notification and Motion on the Petitioner, Kathleen Danner, in the captioned case of the Iowa District Court, Johnson County, Equity 1748.

2. That said service was accomplished by delivering to her a true copy of each thereof.

3. All of which was accomplished in Omaha, Douglas County, State of Nebraska.

/s/ J. M. Tramp

Deputy Sheriff-Douglas County-NE

Signature of Officer Serving Such

Subscribed and sworn to before me this 13th day of May, 1985

/s/ Rose M. Cemore

General Notary-State of Nebraska

My commission expires: February 14, 1988

(Seal of Notary is Affixed)

APPENDIX G

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

ANSWER

Filed September 11, 1984

Kathleen Ann Danner, Petitioner,

vs.

David John Danner, Respondent.

Answering the writ of general execution of the Petitioner, Kathleen Danner, Respondent, David Danner, pursuant Iowa Rules of Civil Procedure, Rule 86, as distinct defense alleges:

1. That Petitioner was guilty of constructive fraud in petition to the original action and Respondent appeared and so objected. Respondent exercised due diligence in attempting to discover material fact and secure counsel, but through misfortune was not able to effect either. Respondent's misfortune being proportional to the scandalous conduct of Petitioner before she joined the original action. Petitioner maintained merely a pecuniary interest in this action. Petitioner is aware of the statute of limitations in regard to other actions to which she might be party. Petitioner is guilty of laches and unreasonable delay in bringing this action forward.

2. That Petitioner is guilty of active negligence and constructive fraud since having moved her residence from the State of Iowa on or about April 1, 1975. Petitioner had a duty to furnish her current address to Respondent and Clerk of the District Court, Johnson County. Respondent had and would have continued to make support payments if he had not been so misled by Petitioner. Petitioner did effectively and without cause deny Respondent access to his minor child from April 1, 1975 to May 6, 1979. Petitioner has received the benefit she desired while Respondent has suffered corresponding loss. Respondent has been prejudiced and disadvantaged. Petitioner has without cause denied Respondent any viable or significant access to his minor child since May 6,

APPENDIX G

1979.

3. That it is and always has been the intent of Respondent to fulfill his support obligation to Petitioner. Respondent has consistently sought to tender money to Petitioner in support of his minor child. The final decree entered February 11, 1975 does not direct payment to Clerk of the District Court, Johnson County. Petitioner did not file a correct address of her residence with said Clerk until on or about April 1, 1984. Petitioner has sought to evade Respondent's tender of support without cause in order to deny him access to his minor child. Petitioner has accepted sums of money from her affinal relations in consideration for their access to Respondent's minor child. There is a discernable and classic pattern designed to deny or freeze Respondent out of any contact with his minor child so that Petitioner might assert an undue influence over said child. Respondent has been damaged by these wrongful acts. Respondent, in December, 1980, established a joint account, #0019850007, under Petitioner's signature so that support money could be drawn by her and the residence of Petitioner would not be at issue. Petitioner mismanaged said account with wrongful intent and waivered her rights over said account on October 23, 1981 without consideration. Petitioner's intent was to further deny Respondent access to his minor child.

4. Respondent does not deny that a judgment exists but due to particular facts, not the least of which is the fraud of Petitioner, equity demands that the benefits flowing from said judgment be denied Petitioner by virtue of the writ of general execution. Respondent is of the belief that there does not exist an adequate relief from said judgment at law and in order to prevent an injustice, equitable relief be granted Respondent by quashing said writ of execution. Petitioner has not maintained a complete cause of action by failing to supply and denying support payments made by Respondent. It would be inequitable to

make Respondent pay twice.

5. That it is inequitable to allow Petitioner recovery under said writ of execution because she has not done equity. Thus Petitioner be equitably estopped from recovery due to her fraud. The garnishment is an excessive burden upon Respondent and impends bankruptcy from which the construction of Title 15, Section 1673, United States Code Annotated allows relief. It is not in the best interest of Respondent's minor child that he be bankrupt. Further enforcement by garnishment will serve only to further the injustice already visited upon Respondent.

6. Respondent has, since petitioner waivered support payment on October 23, 1981, established a separate and distinct constructive trust under the social security number of his minor child and deposited into said account support money from the account, #001985007, waivered by Petitioner. Respondent is of the belief that the long range best interests are better served when support for his minor child is placed in said trust account. Respondent has deposited, not withdrawn from said trust account and will continue to deposit for the support of his minor child. The deposits into account #0019850007 continue to this day under an automatic payroll deduction.

7. Respondent has always sought to enforce his rights of visitation. Respondent is entitled to exert his right as superior to those claimed by any other affine or consanguine, with the exception of Petitioner, into whose physical custody his minor child was placed. Respondent has made 80 requests for visitation since May, 1979, only 14 of which have been granted by Petitioner, in willfull violation of the final decree of February 11, 1975.

DIVISION II.

By way of Counterclaim against the Petitioner, Kathleen Danner, Respondent, David Danner states:

1. That Petitioner in her writ of general execution of May

APPENDIX G

14, 1984, places judgment against Respondent in the amount of $14,220.00.

2. That Respondent by Affidavit, August 31, 1984, swore no more than 200 hours total visitation with his minor child since April 1, 1975.

3. That by dividing Respondent's total visitation time, 200 hours, into the judgment sworn by Petitioner, $14,220.0, a multiple of approximately 71 is reached.

4. That Respondent has made repeated requests for access to his minor child as sworn by affidavit, August 31, 1984, totaling 80 in number since locating his child on May 6, 1979.

5. That Respondent maintains a visit of 16 hours every 6 weeks conforms with the final decree entered February 11, 1975. This equals 77 visits since April 1, 1975 and totals 1232 hours as the legal right of Respondent under said decree.

6. That Respondent was seriously aggrieved when deprived by Petitioner of reasonable visitation without cause. This active negligence on the part of Petitioner carries a liability for consequences, which in light of attendant circumstances could reasonably have been anticipated by a prudent person. The liability of Petitioner amounting to 1032 hours of visitation, reached when subtracting 200 hours granted from 1232 hours as Respondent's by decree.

7. That Respondent asks for actual and exemplary damages be assessed against Petitioner due to her active negligence in the granting of reasonable visitation with Respondent's minor child, as Respondent's right by decree. In computing a dollar amount, the figure is reached when multiplying 1032 hours by 71, arriving at $73,272.00.

Wherefore Respondent prays the Court award him such damages as deemed equitable and seems just in the premises and not to exceed $73,272.

APPENDIX G

/s/ David Danner

David Danner,
Box 1793, Iowa City, IA, 52244
Respondent.

Exhibit attached.

(The document here reproduced is attached and certified).

I, /s/ Kathleen Danner, do hereby waive all claims to the University of Iowa Credit Union member no. 0019850007 and surrender all rights of joint ownership on that account.

Signature /s/ Kathleen Danner

Witness /s/

Date October 23, 1981

(verification omitted here).

APPENDIX H

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

ORDER

Filed August 31, 1984

In re the Marriage of Kathleen Ann Danner and David John Danner

Kathleen Ann Danner, Petitioner

and

David John Danner, Respondent.

This case came before me pursuant to Respondent's Motion for Judgment notwithstanding Verdict, Motion for Stay Pending Application for Judgment, and Motion to Amend or Enlarge Findings or Conclusions. On August 3, 1984, I heard the Defendant's Motion to Quash Garnishment and Motion to Correct Judgment. I overruled the motions on August 6, 1984. I set Respondent's motion for hearing because of the fact that the Respondent pointed out that the judgment entry did not provide child support payments be made through the Clerk of Court's Office and there was a problem in determining how much was in fact owed.

This case and these proceedings are unusual! The Defendant has appeared personally and without counsel. He was originally ordered to pay temporary child support in the sum of $30.00 per week by Judge Louis Schultz in October of 1974. Apparently, he has made those payments. Also, he was ordered to pay $30.00 per week child support by Judge James Carter in the Decree of Dissolution filed February 11, 1975. The Decree does not provide that the Respondent should make the support payments through the Clerk of Court's Office, even though the temporary support order did. It appears that the Respondent did pay support through the Johnson County Clerk of Court until April of 1975, when his former wife and child left the State of Iowa. they did not tell the Respondent where they were going, and the Respondent was unable to locate the whereabouts of his wife and child until May of 1979. Contact was made through his brother. The Respondent has

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submitted a number of exhibits which will be made a part of this record and which show the Respondent made valiant efforts to locate the whereabouts of his former wife and daughter. After May 6, 1979, the Respondent did have contact with his child. He did make some support payments in the form of cash and personal checks. These payments amount to $840.00 to the present date. The Respondent claims that he has been paying into an escrow account for his daughter's benefit for several years. He indicates that he is the only one who has access to this account. The petitioner has garnished the Respondent's wages. The issue before the Court is whether or not that garnishment should be quashed.

If the Court accepts all the Respondent's statements as true, it would appear unfair for the Petitioner to be garnishing the Respondent's paychecks for child support payments which were due between April of 1975 and May of 19879. The defense of laches would apply. Laches applies where there has been an unreasonable delay in asserting a remedy. See Davidson vs Van Lengen, 266 N.W.2d 436 (Iowa, 1978). The defense of laches is available only where it would be inequitable to allow recover. An element of laches is injury or prejudice to the party against whom judgment is sought to be enforced. See Lovlie vs Plumb, 250 N.W.2d 56 (Iowa, 1977). The record in this case indicates that the Respondent had no obligation to make support payments through the Clerk of Court, and further did not know where to send the support payments until May of 1979. It appears unequitable at this point in time to be garnished for those amounts of money. Respondent, however, should be responsible for child support payments from May 6, 1970. The Court has calculated that since that time until the present date, there have been 277 weeks where child support is due. This number of weeks times $30.00 is $8,310.00. Further, the Court deducts the sum of $840.00 paid directly to the Petitioner in the form of checks or cash. This leaves a balance of $7,470. Clearly this sum is due, and the Respondent is subject to garn-

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ishment for said amount.

IT IS THEREFORE THE ORDER OF THIS COURT that the Motion to Quash the Garnishment is overruled. The Motion for Judgment Notwithstanding the Verdict is overruled with the exception that the Court orders that the only amount which can be attached or garnished by the Petitioner is the sum of $7,470.00. The Court is not reducing the judgment, but is restricting the enforcement of it. See Anthony vs Anthony, 204 N.W. 2d 829 (Iowa, 1973). The Motion for Stay Pending Application for Judgment is overruled, and the Respondent's Motion to Amend or Enlarge Findings or Conclusions is overruled with the exception of additional findings in this ruling.

The Respondent was advised to seek legal counsel in this case. So there is no dispute as the the Court's ruling, the Court is not staying or stopping any garnishment or executions in the sum of $7,470.00 as to this date. The judgment will increase if child support payments are not made as ordered.

Dated this 31st day of August, 1984.

/s/ L. Vern Robinson

L. Vern Robinson
Judge of the 6th Judicial
District

APPENDIX I

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

MOTION TO QUASH WAGE GARNISHMENT

Filed July 5, 1984

Kathleen Ann Danner, Petitioner,

vs.

David John Danner, Defendant.

The undersigned defendant moves to set aside the attachment of his wages herein and for an order that the garnishee forthwith pay them to him forthwith because:

1. Defendant is employed by the garnishee and is entitled to receive personal earnings from that employment.

2. Defendant has been deprived of said earnings, and of their use and benefit, and unless set aside, said garnishment shall deprive defendant of certain subsistence needs, to wit, shelter and food, during this interval. The garnishment being issued and the earnings being impounded, without defendant having any opportunity to be heard on the merits of the claim against him before being thus deprived of his wages.

3. Defendant has attempted numerous times, in good faith, to comply with the cause of this action, id est by establishing an account under petitioner's signature and paying into said account such monies as could be drawn freely by petitioner. Defendant has attempted, at all times, to the best of his ability, to provide a suitable environment for the care and support of his minor child. Petitioner is gainfully employed and has stated on occasion that her wages are in excess of those of defendant.

/s/ David Danner

David Danner
P.O. Box 1793
Iowa City, Iowa 52244
Defendant

APPENDIX J

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

NO. 1748

DECREE OF DISSOLUTION OF MARRIAGE

Filed February 11, 1975

Kathleen Ann Danner, Petitioner,

vs.

David John Danner, Respondent.

THIS matter coming on for final hearing on the 11th day of February, 1975 and the Court having examined the record, finds that the Respondent received proper legal service of Original Notice of this matter and that the Court has jurisdiction over the parties and of the subject matter; John M. Maher of Hawkeye Legal Aid Society, Iowa City, Iowa, appeared for Petitioner.

By examination of the record and testimony of the witnesses, the Court finds that:

1. There has been a breakdown of the marriage relationship of the paries herein to the extent that the legitimate ends and

objects of matrimony have been destroyed and there remains no reasonable likelihood that this marriage can be preserved.

2. That the best interests of the minor child, SARAH CROSSMAN DANNER, require that she be placed in the permanent care and custody of the Petitioner, subject to reasonable rights of visitation in the Respondent.

3. Respondent is able bodied and capable of contributing to the support of the minor child.

4. Conciliation in ths matter has been waived by an Order of this Court dated December 17, 1974.

5. The 90-day waiting period has expired.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the marriage relationship now existing between KATHLEEN ANN DANNER and DAVID JOHN DANNER is hereby dissolved; that the parties hereby are restored to all the rights and privileges of unmaried

persons, except that they may not, without the Court's permission, marry anyone but each other in the State of Iowa within one year from the date of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the minor child be placed in the permanent care and custody of the Petitioner, subject to reasonable visitation by the Respondent, and that such visitation shall take place at or near the home of the Petitioner, unless and until the Respondent provides suitable premises for such visitation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Respondent shall pay the sum of $30.00 per week as support for the minor child, and that Petitioner shall have sole and exclusive ownership of all household goods, appliances, and furnishings, for the care and support of the minor child.

/s/James H. Carter
James H. Carter
Judge of the Sixth Judicial
District of Iowa